UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1995/1
21 April 1995

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fourth session
Vienna, 30 May-9 June 1995
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda

1. Election of officers.

2. Adoption of the agenda and organization of work.

3. Consideration of the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

4. Review of priority themes.

5. Technical cooperation and strengthening of the United Nations crime prevention and criminal justice programme.

6. United Nations standards and norms in the field of crime prevention and criminal justice.

7. Cooperation and coordination of activities with other United Nations bodies and other entities.

8. Programme questions.

9. Provisional agenda for the fifth session of the Commission.

10. Adoption of the report of the Commission on its fourth session.

V.95-53228T

Annotations

1. Election of officers

At its fourth session, the Commission on Crime Prevention and Criminal Justice, in accordance with rule 15 of the rules of procedure of the functional commissions of the Economic and Social Council (E/5975/Rev.1) and with the practice established at its first session, may wish to elect five officers, that is, a Chairman, three Vice-Chairmen and a Rapporteur.

In accordance with Commission decision 1/101, the post of Chairman of the fourth session of the Commission is to be occupied by a member of the Group of Western European and other States and the post of Rapporteur by a member of the Group of Latin American and Caribbean States.

The membership of the Commission at its fourth session is given in annex I.

2. Adoption of the agenda and organization of work

On the recommendation of the Commission at its third session, the Economic and Social Council adopted decision 1994/282, in which it approved the provisional agenda for the fourth session of the Commission.

The proceedings of the Commission on Crime Prevention and Criminal Justice are governed by the rules of procedure of the functional commissions of the Economic and Social Council.

The organization of work proposed for the Commission at its fourth session is given in annex II.

3. Consideration of the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

In its resolution 1993/32, the Economic and Social Council, on the recommendation of the Commission at its second session, approved the provisional agenda and endorsed the programme of work for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, including the holding of six workshops.

On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/19. In section I of that resolution, the Council reaffirmed the organizational arrangements stipulated in its resolutions 1992/24 and 1993/32.

In its resolution 1994/19, section VI, the Economic and Social Council recommended that the Ninth Congress, during the plenary discussion on corruption, should consider the desirability of a code of conduct for public officials and that the Secretary-General should seek comments from Member States and relevant entities, in order to assist the Commission in its consideration of the matter at its fourth session. The draft international code of conduct for public officials, in its amended form (A/CONF.169/14, annex I), will be made available to the Commission for its consideration.

The General Assembly, in its resolution 49/157, accepted with gratitude the generous invitation of the Government of Egypt to act as a host for the Ninth Congress and called upon the Ninth Congress to formulate concrete recommendations for improving the effectiveness of the United Nations activities and mechanisms in the field of crime prevention and criminal justice, taking into account the recommendations made by the regional preparatory meetings and paying particular attention to the operational activities of the United Nations crime prevention and criminal justice programme. In the

same resolution, the General Assembly requested the Commission to give priority attention at its fourth session to the conclusions and recommendations of the Ninth Congress, with a view to recommending appropriate follow-up, through the Economic and Social Council, by the Assembly at its fiftieth session.

The Commission will have before it the report of the Ninth Congress. In addition, all working papers and background papers prepared for the Ninth Congress will be available to the Commission.

Documentation

Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/16)

Background documentation

Provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/1)

Provisional rules of procedure for United Nations congresses on the prevention of crime and the treatment of offenders (A/CONF.169/2)

Note by the Secretariat on adoption of the agenda and organization of work (A/CONF.169/3)

Working paper prepared by the Secretariat on international cooperation and practical technical assistance for strengthening the rule of law; promoting the United Nations crime prevention and criminal justice programme (A/CONF.169/4)

Working paper prepared by the Secretariat on action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation (A/CONF.169/5)

Working paper prepared by the Secretariat on criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections; and the role of lawyers (A/CONF.169/6)

Working paper prepared by the Secretariat on crime prevention strategies, in particular as related to crimes in urban areas and juvenile and violent criminality, including the question of victims: assessment and new perspectives (A/CONF.169/7)

Background paper for the workshop on extradition and international cooperation: exchange of national experiences and implementation of extradition principles in national legislation (A/CONF.169/8)

Background paper for the workshop on the mass media and crime prevention (A/CONF.169/9)

Background paper for the workshop on urban policy and crime prevention (A/CONF.169/10)

Background paper for the workshop on the prevention of violent crime (A/CONF.169/11)

Background paper for the workshop on environmental protection at the national and international levels: potentials and limits of criminal justice (A/CONF.169/12)

Background paper for the workshop on international cooperation and assistance in the management of the criminal justice system: computerization of criminal justice operations and the development, analysis and policy use of criminal justice information (A/CONF.169/13)

Progress report prepared by the Secretariat on the United Nations Crime and Justice Information Network: present and future dimensions; towards the establishment of a United Nations crime and justice clearing-house (A/CONF.169/13/Add.1)

Background paper prepared by the Secretariat on international action against corruption (A/CONF.169/14)

Interim report prepared by the Secretariat on results of the Fourth United Nations Survey on Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/15)

Interim report prepared by the Secretariat on results of the supplement to the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, on transnational crime (A/CONF.169/15/Add.1)

Demonstration and research workshops at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders: consultations held in pursuance of Economic and Social Council resolution 1994/19 (A/CONF.169/CRP.1)

United Nations surveys of crime trends and operations of criminal justice systems (1970-1995): documentation list (A/CONF.169/CRP.2)

Statistical tables containing data from the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/CRP.3)

4. Review of priority themes

The Economic and Social Council, in its resolution 1992/22, section VI, determined that the following priority themes should guide the work of the Commission in the development of a detailed United Nations crime prevention and criminal justice programme and the budget allocations for the period 1992-1996:

(a) National and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment;

(b) Crime prevention in urban areas, juvenile and violent criminality;

(c) Efficiency, fairness and improvement in the management and administration of criminal justice and related systems, with due emphasis on the strengthening of national capacities in developing countries for the regular collection, collation, analysis and utilization of data in the development and implementation of appropriate policies.

The Economic and Social Council, on the recommendation of the Commission at its third session, adopted resolution 1994/12, on organized transnational crime, in which it requested the Commission to continue to accord high priority to the question of organized transnational crime and to give appropriate follow-up to the conclusions and recommendations of the World Ministerial Conference on Organized Transnational Crime, which was subsequently held at Naples, Italy, from 21 to 23 November 1994, in accordance with Economic and Social Council resolution 1993/29.

On the recommendation of the World Ministerial Conference, the General Assembly adopted resolution 49/159, in which it approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, chap. I, sect. A) and requested the Secretary-General to transmit the Naples Political Declaration and Global Action Plan to the Commission for appropriate action, while recommending a higher level of priority for the United Nations crime prevention and criminal justice programme within the framework of the United Nations.

In the same resolution, the Assembly requested the Commission to keep the implementation of the Naples Political Declaration and Global Action Plan under regular review. In the Global Action Plan, paragraph 34, the World Ministerial Conference requested the Commission to initiate the process of requesting the views of Governments on the impact of international instruments, such as a convention or conventions against organized transnational crime, and on the issues that could be covered therein.

The Commission will have before it the report of the World Ministerial Conference (A/49/748, annex), which contains the Naples Political Declaration and Global Action Plan, together with a report of the Secretary-General (E/CN.15/1995/2) on proposals related to the programmatic aspects of the follow-up to the Naples Political Declaration and Global Action Plan.

The Economic and Social Council, in its resolution 1994/14, on criminal justice action to combat the organized smuggling of illegal migrants across national boundaries, decided that the ever-growing problem of organized smuggling of illegal migrants required the continuing scrutiny of the international community in general and should be considered by the Commission at its fourth session in the context of the broader problem of organized transnational crime.

The Commission will have before it the report of the Secretary-General (A/49/350 and Add.1) on measures to combat alien-smuggling and a note by the Secretariat (E/CN.15/1995/3) containing additional information on the subject and summaries of replies received from States and intergovernmental organizations after the submission of the above-mentioned report of the Secretary-General.

In accordance with Commission resolution 3/2, the subject of international traffic in minors is to be considered by the Commission at its fourth session in the context of its discussion on the question of organized transnational crime. For this purpose, the Commission will have before it a report (E/CN.15/1995/4) on the world situation with regard to international traffic in minors, prepared by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders, in cooperation with the Secretary-General.

The Economic and Social Council, in its resolution 1993/27, adopted upon the recommendation of the Commission at its second session, took note of the proposed guidelines for cooperation and technical assistance in the field of urban crime prevention, contained in the annex to that resolution. In the same resolution, the Council requested the Secretary-General to disseminate the proposed guidelines as widely as possible, with a view to their being examined by the Commission at its third session.

The Commission at its third session examined the proposed guidelines. On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/20, in which it welcomed the proposed guidelines, contained in the annex to that resolution, decided to transmit them to the Ninth Congress and requested the Commission to finalize them at its fourth session.

In its resolution 3/1, the Commission called for the elimination of violence against women and children and emphasized the duty of Governments to exercise due diligence to prevent, investigate and punish acts of violence against women and children. In addition, the Commission decided to continue

its consideration of the issue at its fourth session by having its in-sessional working group examine, as separate questions, violence against women and violence against children.

The Commission will have before it the report of the Secretary-General (E/CN.15/1995/5) on activities of United Nations bodies and institutions with regard to the issue of violence against women and children.

Documentation

Report of the Secretary-General on proposals related to the programmatic aspects of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (E/CN.15/1995/2)

Note by the Secretariat on additional information on measures to combat alien-smuggling (E/CN.15/1995/3)

Report prepared by the Latin American Institute for the Prevention of Crime and the Treatment of Offenders on the world situation with regard to international traffic in minors (E/CN.15/1995/4)

Report of the Secretary-General on activities of United Nations bodies and institutions with regard to the issue of violence against women and children (E/CN.15/1995/5)

Background documentation

Report of the Secretary-General on measures to combat alien-smuggling (A/49/350 and Add.1)

Note by the Secretary-General on the sale of children, child prostitution and child pornography (A/49/478)

Report of the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to 23 November 1994 (A/49/748, annex)

Provisional annotated agenda and proposed organization of work for the World Ministerial Conference on Organized Transnational Crime (E/CONF.88/1)

Background document on problems and dangers posed by organized transnational crime in the various regions of the world (E/CONF.88/2)

Background document on national legislation and its adequacy to deal with the various forms of organized transnational crime; appropriate guidelines for legislative and other measures to be taken at the national level (E/CONF.88/3)

Background document on the most effective forms of international cooperation for the prevention and control of organized transnational crime at the investigative, prosecutorial and judicial levels (E/CONF.88/4)

Background document on appropriate modalities and guidelines for the prevention and control of organized transnational crime at the regional and international levels (E/CONF.88/5)

Background document on the feasibility of elaborating international instruments, including conventions, against organized transnational crime (E/CONF.88/6)

Conclusions and recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: A Global Approach (E/CONF.88/7)

Preliminary report, submitted to the Commission on Human Rights, by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45 (E/CN.4/1995/42)

Report of the Secretary-General, submitted to the Commission on the Status of Women, on activities of the United Nations bodies and institutions concerned with crime prevention (E/CN.6/1995/9)

5. *Technical cooperation and strengthening of the United Nations crime prevention and criminal justice programme*

The Economic and Social Council, in its resolution 1992/22, section VII, decided that the Commission should include in its agenda a standing item on technical assistance, which would deal with the most practical course of action to be followed to render the programme fully operational and enable it to respond to the specific needs of Governments, including financial needs, if possible.

On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/22, on technical cooperation in the field of crime prevention and criminal justice, in which it reaffirmed the urgent need to develop and maintain the institutional capacity of the United Nations crime prevention and criminal justice programme in the field of crime prevention and criminal justice. In the same resolution, the Council reiterated its request to the Secretary-General to provide, within the overall appropriations of the programme budget, human and financial resources for the programme in order to develop its institutional capacity. The Council also requested the Secretary-General to provide appropriate resources for the programme in order to ensure adequate support for interregional advisory services. In addition, the Council invited Member States to contribute both financially and in kind to the technical cooperation projects elaborated within the programme.

Also on the recommendation of the Commission at its third session, the Council adopted resolution 1994/16, in which it recommended that the General Assembly keep under review the staffing of the programme and called on Member States to contribute to the United Nations Crime Prevention and Criminal Justice Fund. In the same resolution, the Council requested the Secretary-General to provide support and training for the enhancement of the operational capacity of the programme. Finally, it requested the Secretary-General to ensure the implementation of that resolution and to report thereon to the Commission at its fourth session.

The General Assembly, in its resolution 49/158, on strengthening the United Nations crime prevention and criminal justice programme, particularly its technical cooperation capacity, reaffirmed the priority of the programme and the need for an appropriate share of the existing resources of the United Nations for the programme. In addition, the General Assembly requested the Secretary-General to give effect to Assembly resolutions 46/152, 47/91 and 48/103 and to Economic and Social Council resolutions 1992/22, 1993/31, 1993/34 and 1994/16 by providing the programme with sufficient resources for the full implementation of its mandates, in conformity with the high priority attached to it. Also in that resolution, the Assembly recognized that operational activities and technical assistance should continue to receive priority attention among United Nations activities in crime prevention and criminal justice. It requested the Secretary-General to provide adequate funds to build and maintain the institutional capacity of the programme to respond to requests of Member States for assistance.

The report of the Secretary-General (E/CN.15/1995/6) on technical cooperation and strengthening the United Nations crime prevention and criminal justice programme, and on the strengthening of the programme, will be before the Commission for its consideration.

The Commission, in its resolution 3/3, requested the Secretary-General to consider strengthening the servicing of the clearing-house projects, including the United Nations surveys on crime trends and operations of criminal justice systems and computerization projects by allocating staff and other resources commensurate with the intensification of work on those projects and to submit a statement to the Commission at its fourth session on the financial implications involved in improving the undertaking of such projects. Accordingly, the Commission will have before it a report of the Secretary-General (E/CN.15/1995/6/Add.1) on proposals for improving the clearing-house capacity of the United Nations crime prevention and criminal justice programme.

Documentation

Report of the Secretary-General on technical cooperation and strengthening of the United Nations crime prevention and criminal justice programme (E/CN.15/1995/6)

Report of the Secretary-General on proposals for improving the clearing-house capacity of the United Nations crime prevention and criminal justice programme (E/CN.15/1995/6/Add.1)

Background documentation

Report of the Secretary-General on progress made in the implementation of General Assembly resolutions 46/152, 47/91 and 48/103 (A/49/593)

Working paper prepared by the Secretariat on international cooperation and practical technical assistance for strengthening the rule of law: promoting the United Nations crime prevention and criminal justice programme (A/CONF.169/4)

Interim report prepared by the Secretariat on results of the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/15)

Interim report by the Secretariat on results of the supplement to the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, on transnational crime (A/CONF.169/15/Add.1)

United Nations surveys of crime trends and operations of criminal justice systems (1970-1995): documentation list (A/CONF.169/CRP.2)

Statistical tables containing data from the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/CRP.3)

6. United Nations standards and norms in the field of crime prevention and criminal justice

The Economic and Social Council, in its resolution 1994/18, reaffirmed the important contribution that the use and application of United Nations standards and norms in crime prevention and criminal justice made to criminal justice systems and invited Member States to ensure their widest possible dissemination and to strengthen the human and financial resources available to the Crime Prevention and Criminal Justice Branch of the Secretariat.

In the same resolution, the Council invited Member States to respond to the questionnaires on the following United Nations standards and norms in crime prevention and criminal justice:

(a) The Standard Minimum Rules for the Treatment of Prisoners;[1]

(b) The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex), together with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[2]

(c) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);

(d) The Basic Principles on the Independence of the Judiciary.[3]

Also in its resolution 1994/18, the Council requested the Commission to continue its consideration of the question at its fourth session by having the open-ended in-sessional working group discuss, *inter alia*, the role of the United Nations in promoting the use and application of standards and norms in crime prevention and criminal justice.

Accordingly, the Commission will have before it a report of the Secretary-General (E/CN.15/1995/7) on United Nations standards and norms in the field of crime prevention and criminal justice.

On the recommendation of the Commission at its third session, the Economic and Social Council adopted resolution 1994/17, by which it decided:

(a) To note the draft minimum rules for the administration of criminal justice (E/CN.15/1994/11), prepared by an expert commission that had held four working sessions at Palma de Mallorca, Spain, from 23 to 25 November 1990, from 3 to 5 May 1991, from 5 to 8 September 1991 and from 14 to 16 February 1992;

(b) To request the Secretary-General to seek comments from all Member States and from other appropriate sources on the desirability of preparing and adopting United Nations minimum rules in the field covered by the draft minimum rules prepared by the expert commission, and to submit a report to the Commission at its fourth session;

(c) To request the Commission to follow up that matter at its fourth session.

Accordingly, the Commission will have before it a report of the Secretary-General (E/CN.15/1995/7/Add.1) on the development of United Nations minimum rules for the administration of criminal justice.

Documentation

Report of the Secretary-General on United Nations standards and norms in the field of crime prevention and criminal justice (E/CN.15/1995/7)

Addendum to the report of the Secretary-General on United Nations standards and norms in the field of crime prevention and criminal justice: the development of United Nations minimum rules for the administration of criminal justice (E/CN.15/1995/7/Add.1)

Background documentation

Report of the Secretary-General pursuant to Commission on Human Rights resolution 1993/80, on the expert group meeting on children and juveniles in detention: application of human rights standards (E/CN.4/1995/100)

7. Cooperation and coordination of activities with other United Nations bodies and other entities

The Economic and Social Council, in its resolution 1992/22, section IV, requested the Commission to cooperate closely with other United Nations bodies and the specialized agencies in order to increase the efficiency and effectiveness of United Nations activities in areas of mutual concern and to ensure proper coordination and avoidance of duplication. In addition, the Council urged the Commission to cooperate closely with intergovernmental and non-governmental organizations in the development and implementation of the programme. The Council also recommended that the Secretary-General should undertake, *inter alia*, the coordination and integration of the activities of the interregional, regional and associated institutes cooperating with the United Nations in the field of crime prevention and criminal justice.

In its resolution 1993/34, section V, the Council invited other entities of the United Nations system to cooperate with the Crime Prevention and Criminal Justice Branch. In addition, the Council decided to continue its close cooperation with the Commission on Human Rights, the Commission for Social Development, the Commission on Narcotic Drugs, the Commission on the Status of Women and the specialized agencies. The Council also requested the Secretary-General to encourage and facilitate cooperation and coordination in accordance with that resolution and to report on the subject to the Commission on Crime Prevention and Criminal Justice.

The Commission on Crime Prevention and Criminal Justice will have before it a report of the Secretary-General (E/CN.15/1995/8) on cooperation and coordination of activities in crime prevention and criminal justice, including activities of the United Nations International Drug Control Programme (UNDCP), and a report of the Secretary-General (E/CN.15/1995/9) on the activities of the United Nations Interregional Crime and Justice Research Institute and other institutes, including the African Institute for the Prevention of Crime and the Treatment of Offenders.

The attention of the Commission is drawn to the Statute of the United Nations Interregional Crime and Justice Research Institute, article IV, entitled "Board of Trustees" (Economic and Social Council resolution 1989/56, annex). Action is required on the part of the Commission and the Economic and Social Council concerning the terms of appointment of three members of the Board. Background information on the proposed candidates is contained in the addendum to the report of the Secretary-General on the activities of UNICRI and other institutes (E/CN.15/1995/9/Add.1).

In pursuance of Economic and Social Council resolution 1994/21 and of General Assembly resolution 49/156, the Commission will have before it the report of the Secretary-General on the African Institute for the Prevention of Crime and the Treatment of Offenders (A/49/712).

The General Assembly, in its resolution 49/158, requested the Secretary-General further to strengthen cooperation between the Crime Prevention and Criminal Justice Branch and UNDCP. The Assembly also requested the Secretary-General to take all necessary measures to assist the Commission on Crime Prevention and Criminal Justice, as the principal policy-making body in the field of crime prevention and criminal justice, in performing its functions and to ensure the proper coordination of all relevant activities in the field, in particular with the Commission on Human Rights and the Commission on Narcotic Drugs.

In its resolution 3/5, the Commission on Crime Prevention and Criminal Justice requested the Secretary-General to ensure continued coordination of the activities of the Crime Prevention and Criminal Justice Branch and UNDCP. In addition, the Commission on Crime Prevention and Criminal Justice requested those two entities to report jointly and annually to it and to the Commission on Narcotic Drugs on progress achieved in strengthening coordination. The Commission on Narcotic Drugs made a similar request in its resolution 1 (XXXVII). Accordingly, the Crime Prevention and Criminal Justice Branch and UNDCP jointly prepared a report on strengthening system-wide cooperation and coordination in drug control, which was submitted to the Commission on Narcotic Drugs at its thirty-eighth session (E/CN.7/1995/15/Add.2). That report has been incorporated in the report of the Secretary-General on cooperation and coordination of activities in crime prevention and criminal justice, including activities of UNDCP. The Commission may wish to direct its attention to Commission on Narcotic Drugs resolution 9 (XXXVIII), on operational measures to ensure and strengthen cooperation between UNDCP and the Crime Prevention and Criminal Justice Branch.

Documentation

Report of the Secretary-General on cooperation and coordination of activities in crime prevention and criminal justice, including activities of the United Nations International Drug Control Programme (E/CN.15/1995/8)

Report of the Secretary-General on activities of the United Nations Interregional Crime and Justice Research Institute and other institutes, including the African Institute for the Prevention of Crime and the Treatment of Offenders (E/CN.15/1995/9)

Addendum to the report of the Secretary-General on activities of the United Nations Interregional Crime and Justice Research Institute and other institutes, including the African Institute for the Prevention of Crime and the Treatment of Offenders: nomination of members of the Board of Trustees of the United Nations Interregional Crime and Justice Research Institute (E/CN.15/1995/9/Add.1)

Background documentation

Report of the Secretary-General on the African Institute for the Prevention of Crime and the Treatment of Offenders (A/49/712)

Report of the Secretary-General, submitted to the Ad Hoc Committee on the Establishment of an International Criminal Court, on comments received pursuant to paragraph 4 of General Assembly resolution 49/53 on the establishment of an international criminal court (A/AC.244/1 and Add.1 and 2)

8. Programme questions

The Commission will have before it, for information, excerpts from the report of the Secretary-General on the programme performance of the United Nations for the biennium 1992-1993 (A/49/135 and Add.1) and excerpts from the report of the Committee for Programme and Coordination on the work of its thirty-fourth session (A/49/16).

The Commission will have before it, for its consideration, a note by the Secretary-General on the proposed programme of work in crime prevention and criminal justice for the biennium 1996-1997 (E/CN.15/1995/10).

Documentation

Note by the Secretary-General on the proposed programme of work in crime prevention and criminal justice for the biennium 1996-1997 (E/CN.15/1995/10)

9. Provisional agenda for the fifth session of the Commission

In accordance with rule 9 of the rules of procedure of the functional commissions of the Economic and Social Council, the Commission will have before it the provisional agenda for its fifth session, together with an indication of the documents to be submitted under each agenda item and the legislative authority for their preparation.

Documentation

Note by the Secretariat on the provisional agenda and documentation for the fifth session of the Commission (E/CN.15/1995/L. ...).

10. Adoption of the report of the Commission on its fourth session

The report of the Commission on its fourth session will be submitted to the Economic and Social Council at its substantive session of 1995.

The attention of the Commission is drawn to Economic and Social Council resolution 1989/114, in which the Council requested its subsidiary bodies to highlight policy recommendations and decisions resulting from their deliberations, for consideration and appropriate action by the Council.

Notes

[1]See *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[2]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

[3]See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

Annex I

MEMBERSHIP OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE AT ITS FOURTH SESSION, TO BE HELD AT VIENNA FROM 30 MAY TO 9 JUNE 1995

	Year in which term expires (on 31 December)
Angola	1997
Argentina	1997
Austria	1996
Belarus	1997
Brazil	1996
Burundi	1997
Canada	1997
China	1997
Colombia	1996
Congo	1996
Costa Rica	1997
Cuba	1996
Finland	1996
France	1997
Germany	1996
Hungary	1996
Indonesia	1997
Iran (Islamic Republic of)	1997
Italy	1997
Japan	1996
Madagascar	1997
Malawi	1996
Malaysia	1996
Mexico	1997
Morocco	1996
Nicaragua	1997
Nigeria	1997
Pakistan	1996
Paraguay	1997
Poland	1997
Republic of Korea	1997
Russian Federation	1996
Sri Lanka	1996
Sudan	1996
Thailand	1997
Tunisia	1996
Uganda	1996
United Republic of Tanzania	1996
United States of America	1997
Zaire	1996

Annex II

PROPOSED ORGANIZATION OF WORK FOR THE FOURTH SESSION OF THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE

1. The proposed organization of work for the fourth session of the Commission on Crime Prevention and Criminal Justice, set out below, has been prepared pursuant to relevant decisions of the General Assembly and the Economic and Social Council. Its purpose is to facilitate the consideration of agenda items within the time available, taking into account the conference facilities allocated to the Commission.

2. The proposed timetable should be considered as purely indicative in character. Once the Commission completes the general discussion of an item before an indicated time, it may wish to move immediately to the next item on its work schedule.

3. In pursuance of Economic and Social Council resolution 1993/34, section III, the Commission established, at its third session, an open-ended in-sessional working group, in accordance with the rules of procedure of the functional commissions of the Council (E/5975/Rev.1), in order to discuss, *inter alia*, the role of the United Nations in promoting the use and application of the following:

(a) The Standard Minimum Rules for the Treatment of Prisoners;[a]

(b) The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex);

(c) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[b]

(d) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex);

(e) The Basic Principles on the Independence of the Judiciary.[c]

4. The Economic and Social Council, by its decision 1994/281, decided that the Commission at its fourth session, in addition to plenary meetings, should be provided with full interpretation services for eight meetings for informal consultations on draft proposals and for four meetings of an open-ended in-sessional working group; the open-ended working group would discuss, *inter alia*, the role of the United Nations in promoting the use and application of standards and norms in crime prevention and criminal justice and, as separate questions, violence against women and violence against children in their crime prevention and criminal justice aspects; the decision was taken on the understanding that no more than two meetings would be held concurrently, in order to ensure maximum participation of delegations. The open-ended working group is expected to examine specific measures that can be taken in that respect, taking into account international instruments and the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

5. It is suggested that the open-ended working group, which will have at its disposal interpretation services in all official languages, should start its meetings on the morning of Wednesday, 31 May 1995, and should continue up to and including the afternoon of Thursday, 1 June 1995, and that informal consultations on draft proposals should start on the morning of Friday, 2 June 1995, and should continue up to and including the afternoon of Thursday, 8 June 1995.

6. It is also suggested that a time-limit of 10 minutes should be set for the delivery of statements on the substantive items of the agenda.

7. Arrangements have been made to hold morning and afternoon meetings during the fourth session of the Commission. It is suggested that the meetings should be held from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m.

Date	*Time*	*Subject*
Tuesday, 30 May 1995	Morning	Opening of the session
		Plenary
		Item 1. Election of officers
		Item 2. Adoption of the agenda and organization of work
		Item 3. Consideration of the recommendations of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
	1 p.m.	Closure of list of speakers on item 3
	Afternoon	*Item 3.* Continuation of general discussion
Wednesday, 31 May 1995	Morning	**Plenary**
		Item 3. Continuation and conclusion of general discussion
		Item 4. Review of priority themes
		Open-ended working group
	1 p.m.	Closure of list of speakers on item 4
	Afternoon	*Item 4.* Continuation of general discussion
		Open-ended working group
Thursday, 1 June 1995	Morning	**Plenary**
		Item 4. Continuation and conclusion of general discussion
		Item 5. Technical cooperation and strengthening of the United Nations crime prevention and criminal justice programme
		Open-ended working group
	1 p.m.	Closure of list of speakers on item 5
	Afternoon	**Plenary**
		Item 5. Continuation of general discussion

Date	*Time*	*Subject*
		Open-ended working group
Friday, 2 June 1995	Morning	**Plenary**
		Item 5. Continuation and conclusion of general discussion
		Item 6. United Nations standards and norms in the field of crime prevention and criminal justice
		Committee of the Whole
		Informal consultations
	1 p.m.	Closure of list of speakers on item 6
	Afternoon	**Plenary**
		Item 6. Continuation of general discussion
		Committee of the Whole
		Informal consultations
	6 p.m.	Deadline for submission of draft proposals on items 3 and 4
Tuesday, 6 June 1995	Morning	**Plenary**
		Item 6. Continuation and conclusion of general discussion
		Item 7. Cooperation and coordination of activities with other United Nations bodies and other entities
		Committee of the Whole
		Informal consultations
	1 p.m.	Closure of list of speakers on item 7
	Afternoon	**Plenary**
		Item 7. Continuation of general discussion
		Committee of the Whole
		Informal consultations
	6 p.m.	Deadline for submission of draft proposals on items 5 and 6

Date	*Time*	*Subject*
Wednesday, 7 June 1995	Morning	**Plenary**
		Item 7. Continuation and conclusion of general discussion
		Item 8. Programme questions
	1 p.m.	Closure of list of speakers on item 8
		Informal consultations
		Committee of the Whole
	Afternoon	**Plenary**
		Item 8. Continuation and conclusion of general discussion
		Committee of the Whole
		Informal consultations
	6 p.m.	Deadline for submission of draft proposals on items 7 and 8
Thursday, 8 June 1995	Morning	**Plenary**
		Consideration and action on draft proposals on items 3, 4 and 5
		Committee of the Whole
		Informal consultations
	Afternoon	**Plenary**
		Consideration and action on draft proposals on items 6, 7 and 8
		Committee of the Whole
		Informal consultations
Friday, 9 June 1995	Morning	Consideration and action on any outstanding draft proposals
	Afternoon	*Item 9.* Provisional agenda for the fifth session of the Commission
		Item 10. Adoption of the report of the Commission on its fourth session
		Closure of the session

Notes

[a]*See First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A.

[b]See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex.

[c]See *Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1995/2
22 May 1995

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fourth session
Vienna, 30 May-9 June 1995
Item 4 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Proposals related to the programmatic aspects of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime

Report of the Secretary-General

CONTENTS

	Paragraphs	*Page*
INTRODUCTION	1-6	2
I. PRELIMINARY PROPOSALS FOR ACTION	7-30	2
A. Improving reliable knowledge	8-20	3
B. Assistance in the legislative and regulatory fields	21-27	6
C. Advisory services and training	28-30	7
II. CONCLUSIONS	31-32	8

*E/CN.15/1994/1.

V.95-54239T

INTRODUCTION

1. The World Ministerial Conference on Organized Transnational Crime was held at Naples, Italy, from 21 to 23 November 1994, pursuant to Economic and Social Council resolution 1993/29. On the recommendations of the World Ministerial Conference, the General Assembly in its resolution 49/159 approved the Naples Political Declaration and Global Action Plan against Organized Transnational Crime (A/49/748, annex, chap. I, sect. A), which it urged States to implement as a matter of urgency.

2. In the same resolution, the General Assembly requested the Secretary-General to transmit the Naples Political Declaration and Global Action Plan to the Commission on Crime Prevention and Criminal Justice for appropriate action, while recommending a higher level of priority for the United Nations crime prevention and criminal justice programme within the framework of the United Nations. In addition, the Assembly requested the Commission to keep the implementation of the Naples Political Declaration and Global Action Plan under regular review.

3. The World Ministerial Conference, in its resolution entitled "Establishment of an international task force" (A/49/748, annex, chap. I, sect. B), expressed its appreciation for the proposals of the Government of Italy to organize and host at no cost to the United Nations, in consultation with the United Nations crime prevention and criminal justice programme, an international task force for the elaboration of proposals on the feasibility of establishing an international training centre for law enforcement and criminal justice personnel. In the same resolution, the World Ministerial Conference took into account the offer of the Italian Government to act as host of the centre and to provide the organizational and functional resources; in addition, it invited the Government of Italy to submit the results of the task force's work to the Commission at its fourth session.

4. In the Naples Political Declaration and Global Action Plan specific measures were identified, to be further elaborated and implemented, in order to make action against organized crime more effective and strengthen international cooperation. The measures were intended to strengthen the ability of States to cope with the increasing threat posed by organized transnational crime in its various new forms and manifestations. They were also directed towards enhancing the capacity of developing countries and countries in transition to deal with the problems created by organized transnational crime and towards improving cooperation at the regional and international levels.

5. In the Naples Political Declaration, it was strongly recommended that continued priority attention be accorded within the framework of the United Nations crime prevention and criminal justice programme to strengthening international cooperation against organized transnational crime (para. 7). It was recognized that existing resources were not sufficient to enable the programme to support intensification of efforts at the national level and increased intergovernmental cooperation, and it was recommended that a higher priority should be accorded to the United Nations crime control activities by providing the programme with adequate resources to carry out its mandates and responsibilities (para. 45).

6. The present report contains some proposals for activities designed to assist States in initiating the implementation of the Naples Political Declaration and Global Action Plan, and to help the Commission to take appropriate action and to keep such implementation under regular review.

I. PRELIMINARY PROPOSALS FOR ACTION

7. At the World Ministerial Conference, the representatives of the 142 States proclaimed their political will and strong determination, as well as their unequivocal commitment, to ensure full and expeditious

implementation of the Naples Political Declaration and Global Action Plan. Full implementation will require considerable effort and investment on the part of States and the United Nations, as well as relevant intergovernmental and non-governmental organizations. In order not only to maximize the effect of appropriate action by the Commission, but also to assist States in directing their efforts and resources towards implementation more efficiently, it might be useful to chart a course by identifying areas on which attention should be concentrated and where the United Nations can make a contribution by planning and implementing operational activities. The heads of State and Government, ministers and other high-level representatives of Governments participating in the World Ministerial Conference expressed their deep concern about the dramatic growth of organized crime over the previous decade and about its global reach, which constituted a threat to the internal security and stability of sovereign States. The threat is bound to grow and become more menacing if concerted and decisive action on the part of the international community is delayed. While energies have to be focused and action planned in the most efficient manner, the ultimate goals of effectively preventing and controlling organized transnational crime in all its forms and dimensions and of arresting its expansion at the national and international levels should be guiding the relevant efforts and should constitute the yardstick against which success is to be measured.

A. Improving reliable knowledge

8. Within the framework for strengthening international cooperation already provided by the Naples Political Declaration and Global Action Plan, certain areas of primary concern for the international community have emerged. The capacity of States to prevent and control organized transnational crime depends largely on knowledge and the availability of reliable information about its characteristics, the structures of organized criminal groups, their methods of operation and their interests with respect to illicit activities. In many developed countries, the growth of organized crime has led to considerable high-quality work with respect to accumulating knowledge and collecting reliable information. In spite of these advances, the task facing law enforcement agencies and the criminal justice system in general remains an arduous one, because of the increased diversification and expansion of organized crime across borders, as well as its tendency to become involved in activities characterized by high complexity. In most developing countries and countries in transition, however, various factors, ranging from lack of adequate resources to recent rapid political and economic developments and changes, have slowed down or otherwise inhibited the process of attaining a thorough understanding of the situation. Furthermore, there are considerable difficulties in evaluating the threat posed by organized transnational crime and the capacity of law enforcement and criminal justice systems to respond to it. Compounding these difficulties are changes in the characteristics of organized transnational crime and an almost dramatic increase in the sophistication of its operations, as well as its mounting expansion in response to increased opportunities and weaknesses of national institutions.

9. The Naples Political Declaration and Global Action Plan emphasized the importance of adopting a generally agreed concept of organized crime as a basis for more compatible national responses and more effective international cooperation. In the absence of the comprehensive knowledge about organized crime referred to above, arriving at such a common concept may entail increased difficulties. Consequently, the full potential of international cooperation may be rather difficult to realize, leaving room for loopholes that continue to be exploited by organized criminals. The lack of a common concept of organized crime can considerably hinder national law enforcement and judicial authorities in their efforts to detect, prosecute and adjudicate cases involving organized crime. The exchange and sharing of information and intelligence are vital to these efforts. In many cases, even where bilateral or multilateral cooperation arrangements exist, there appears to be no channels of communication and information exchange between Governments and between the competent national authorities. The reason often cited for this is the lack of understanding of a country's legal system and of the capacity of law enforcement and judicial authorities to produce the best possible results with the relevant information.

Such concerns, which may also include apprehensions regarding the security of information or intelligence, have been known to hamper major investigations and to cause long delays in judicial proceedings, sometimes resulting in impunity for individuals who had been apprehended at a high financial and human cost.

10. The need to improve knowledge on organized crime and its transnational dimensions and activities has become more urgent mainly because of the increased realization of its effects on national and international financial systems, as well as on institutions and society as a whole. There are two levels of knowledge required, which need to coexist and be developed concurrently.

11. The accumulation of theoretical knowledge is irreplaceable in educating younger generations and the public in general and in devising strategies and developing measures to counter the corrupting effects of organized crime on societal values. Theoretical knowledge, however, cannot replace the practical, operational knowledge imparted to law enforcement and judicial personnel to enable them to prevent and control organized transnational crime at all levels. Each type of knowledge will stand to benefit greatly from the other, and a balanced development of both will go a long way towards achieving effective action against organized transnational crime. Academic institutions and professional associations have a major role to play in accumulating theoretical knowledge on organized transnational crime and in disseminating such knowledge, in close cooperation not only with governmental agencies and the education system, but also with the media, non-governmental organizations and the private sector.

12. The development of operational knowledge requires the capacity to process and evaluate information and intelligence derived from day-to-day operations and investigations and from the experiences of other countries in the field. While research is a major component of theoretical knowledge, experience and expertise acquired in field work form the basis of practical knowledge. Another essential element of practical knowledge is the ability of law enforcement and judicial personnel to evaluate the information collected and processed and the intelligence accumulated. This is particularly important in connection with the detection, investigation and adjudication of economic crimes and other illicit activities of organized criminal groups involving financial operations and business transactions.

13. The capacity to collect, process and evaluate information and intelligence at the national level, and also across borders, requires careful planning and consistent implementation of relevant strategies and policies, as well as emphasis on human resource development. In addition, the use of and reliance on modern telecommunications and data-processing equipment are of considerable importance, in view of their increasing utilization by organized transnational crime. Therefore, the accumulation of practical knowledge requires, in addition to commitment and determination, major and long-term investments by Governments, often not only at the operational level but also at the institutional level.

14. For the purpose of the acquisition and dissemination of theoretical knowledge, academic institutions, professional associations and the media should be actively encouraged and supported, and programmes should be put in place to enlist the involvement and participation of the private sector and non-governmental organizations. Comparative studies of practices and experiences in different countries could contribute to the accumulation of both types of knowledge, while the capacity to exchange and use information and intelligence could strengthen international cooperation and render action against organized transnational crime more effective.

15. In an effort to begin collecting information to facilitate the process of accumulating knowledge, the Crime Prevention and Criminal Justice Branch of the Secretariat included the issue of transnational crime for the first time in the Fourth Survey on Crime Trends and Operations of Criminal Justice

Systems. An interim report by the Secretariat on the results of the Fourth Survey supplement on transnational crime (A/CONF.169/15/Add.1) was presented to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Cairo from 29 April to 8 May 1995, and will be available to the Commission.

16. One of the conclusions that can be drawn from the replies provided by Governments is that there are considerable difficulties in many parts of the world in identifying activities of a predominantly transnational nature that organized criminal groups have engaged in. While the potential effects of these activities are appreciated and there are indications that measures are being devised to begin to come to terms with the problems created, in many cases there appears to be a lack of analysis focusing on the specific characteristics of organized crime and the transnational dimensions of its activities. Consequently, there is a delay in legislative and regulatory action which, drawing on the results of such analysis, would prevent and control the further expansion and diversification of organized transnational crime and would promote more effective international cooperation.

17. Developed countries are generally in a position to devote the necessary resources for acquiring the theoretical and practical knowledge that is required for the effective prevention and control of organized transnational crime. As mentioned in paragraph 8 above, considerable efforts in that direction are being made.

18. The difficulties encountered by developing countries and countries in transition, however, make assistance crucial. The United Nations should be in a position to assist countries, through the provision of advisory services and training, in developing the means and techniques of gathering, processing and evaluating information and intelligence on the operations of organized transnational crime, on its methods and interests and on the ways of laundering and using the proceeds of its activities. In collecting and processing information, emphasis should be placed on the expansion of organized crime across borders and on its increased levels of diversification and sophistication, which are elements that require particular attention since they differentiate this form of crime from others. The accumulation of practical knowledge would largely depend not only on the studies that could be carried out at the national level, but also on the comparative studies that could be carried out at the regional and international levels on the basis of reliable information. The Commission may wish to consider the most appropriate modalities of making such assistance by the United Nations possible.

19. In the Naples Political Declaration and Global Action Plan, it was recommended that the United Nations should assist States in specific actions, including increasing the international community's knowledge of criminal organizations and their dynamics (paras. 13 and 43). Accordingly, the Commission may wish to consider the initiation by the United Nations of a comprehensive comparative study of the situation in the various regions of the world, possibly by assembling a team of highly qualified experts with extensive experience in the field of prevention and control of organized crime.

20. By making a global assessment of the transnational organized crime situation, the study would contribute to a better understanding of problems arising from differences among countries in the perception and evaluation of organized transnational crime, thus leading to the gradual development of a common perception of the phenomenon and of a global strategy for more effective international cooperation. The study should draw on national experiences, assisting in the process individual countries that lack the relevant capacity to identify the problem and begin collecting and processing reliable information. It should include an examination of specific types of criminality that are considered particularly dangerous or alarming and an examination of the problems arising from the expansion or reallocation of transnational criminal organizations to countries where defence mechanisms are weak. It should also consider conditions that are conducive to the rise and growth of criminal organizations, such as social, economic and political factors, structural characteristics of organized crime,

and organizational shortcomings in the control agencies. And it should include an analysis of the problems related to the different degrees of development of laws and regulations in individual countries, as well as an analysis of the activities and methods of operation of transnational criminal organizations. The results of the study could be used for the development of special programmes, courses and curricula for academic institutions, to ensure that theoretical knowledge is increased, improved and disseminated, thereby creating the basis for long-term and consistent action against organized transnational crime.

B. Assistance in the legislative and regulatory fields

21. The Naples Political Declaration and Global Action Plan recognized the great importance of adequate legislative and regulatory measures in the prevention and control of organized transnational crime. In particular, it was recommended that the experience of those States which have confronted organized crime and the intelligence derived from the analysis of its structures and criminal activities should be examined by other States for useful guiding principles concerning what substantive, procedural and regulatory legislation and organizational structures were necessary to combat the phenomenon (para. 14). In addition, the regulatory measures recommended in the Naples Political Declaration and Global Action Plan with respect to money-laundering and the proceeds of crime, and other law mechanisms to reinforce transparency and integrity in business and government, should be considered preventive measures of equal importance with penal law means of combating organized crime (para. 18). It was also recommended that substantive legislation penalizing participation in criminal organizations or conspiracies and imposing criminal liability on corporate bodies should be considered by States as a means of strengthening capabilities to combat organized crime domestically and improving cooperation internationally (para. 15).

22. As mentioned in paragraph 16 above, legislative and regulatory measures for the prevention and control of organized transnational crime are still lacking in a number of countries, in spite of the willingness to effectively address this form of crime. In the absence of specialized theoretical and practical knowledge, and in view of the difficulties faced in obtaining such knowledge, as well as the results of the experience accumulated in other countries, the elaboration of strategies and their implementation through legislative and regulatory measures are daunting tasks for many countries, particularly developing countries and countries in transition.

23. In the Naples Political Declaration and Global Action Plan, there was an expressed wish to strengthen and enhance the capability of States, as well as the United Nations and other relevant global and regional organizations, to achieve more effective international cooperation against organized transnational crime, particularly in relation to, *inter alia*, closer alignment of legislative texts concerning organized crime (para. 9). In fact, divergences in legislative and regulatory measures are often considered to be among the principal difficulties encountered in bilateral and multilateral cooperation.

24. The first step towards convergence, and eventual closer alignment of legislative and regulatory measures, should be the adoption and promulgation of policies of demonstrated effectiveness that do not generate problems of compatibility where the legal systems differ, but that actually facilitate cooperation between countries. In the area of substantive legislation, efforts against organized transnational crime could be considerably strengthened by introducing: (a) reforms focused on making it a criminal offence to participate in a criminal organization, making it a criminal offence to take part in conspiracy or to commit similar forms of inchoate offences, prohibiting the laundering of criminal proceeds; and (b) sanctions and other measures, such as the confiscation of illicit proceeds, aimed at defeating the economic power of criminal organizations.

25. In any effort towards closer alignment of the legislative approach to organized transnational crime, the regulatory measures necessary to obtain maximum transparency of financial systems and to prevent monopolies should not be neglected.

26. The Commission may wish to consider the establishment by the United Nations of a central repository of existing legislative and regulatory measures and information on organizational structures designed to combat organized crime. Such a repository would need to be continuously updated and complemented with comparative analyses and commentaries, as well as with information on the ways that measures are applied and on their contribution to the prevention and control of organized transnational crime. The material and information contained in the repository would be placed at the disposal of States and could be used in advisory services and training undertaken by the United Nations in response to requests for assistance in the field of prevention and control of organized transnational crime. The results of the comprehensive study on the organized transnational crime situation in the various regions of the world, mentioned in paragraph 19 above, would be combined with these comparative analyses to enhance the options available to States wishing to enact legislative and regulatory measures.

27. On the basis of the information on legislative and regulatory measures and building on the knowledge and experiences accumulated through the comprehensive study, the United Nations could develop practical models of and practical guidelines for substantive and procedural legislation, in cooperation with relevant international organizations and individual States wishing to contribute to the process. Furthermore, the United Nations could assist requesting States in tailoring these models and guidelines to their particular exigencies and their legal, cultural and social traditions, in order to facilitate integration of the relevant policies and measures within their specific systems, as well as their implementation. In specific areas that present particular difficulties, such as the laundering and use of the proceeds of crime, special attention could be given to assisting States not only in obtaining information on measures and developing the appropriate mechanisms, but also in assessing the needs of their systems in order to maximize the effectiveness of measures and in identifying the most appropriate mechanisms for their implementation.

C. Advisory services and training

28. The accumulation of knowledge and expertise and the development of the capacity to collect, process and analyse reliable information require efforts spanning a considerable period of time. It is necessary to put together the appropriate expertise and to carry out a study that is truly comprehensive, constituting a major contribution to the common efforts of the international community against organized transnational crime. Capacity-building requires a consistent, long-term commitment to ensure that the benefits of assistance can be sustainable through the consolidation of mechanisms and procedures, and the creation of the necessary infrastructure; organized transnational crime, however, continues to be a growing threat to the international community. A well-balanced approach is therefore essential. The efforts to accumulate knowledge need to be undertaken simultaneously with efforts to meet the present needs of States for immediate measures to prevent the expansion of organized transnational crime and to mitigate its effects on their economies and institutions. Concurrently with the need to build the capacity for information collection, there is an urgent need to strengthen existing mechanisms and institutions to fight against organized transnational crime.

29. In order to contribute to this balanced approach, the United Nations should assist requesting States in assessing their immediate needs, through the provision of advisory services. Such services should also be provided in reviewing existing measures, mechanisms and institutions in order to identify and put in place modalities for strengthening their capacity to respond to the problems created by the new manifestations of organized transnational crime. In response to requests from States, the United Nations

should provide expert advice and options on the establishment of special investigative units and on developing reliable evidence-gathering techniques. For the purpose of strengthening the capacity of States to cooperate and exchange information, intelligence and experience, the United Nations should assist in the creation of special mechanisms and the implementation of the appropriate measures.

30. A fundamental purpose of international cooperation is to contribute to the creation of self-reliant capacities in developing countries, as well as in countries in transition. Strengthened technical cooperation in the fight against organized transnational crime should be viewed as a significant step in that direction. The operational activities of the United Nations crime prevention and criminal justice programme should be geared towards developing expertise, especially in countries where it is scarce, and towards promoting the highest standards of professionalism and specialization. Training and upgrading the skills of personnel working in the various areas of criminal justice are crucial, particularly with respect to the investigation, prosecution and adjudication of complex cases. For the purpose of maximizing resources and raising awareness, training seminars could be first organized at the regional level, concentrating on common exigencies and problems, with a view to responding to requests for training courses at the national level. In order to achieve these aims, appropriate expertise needs to be identified and training material developed that would cater to the specific requirements of each region or each group of trainees. Furthermore, effective channels of communication are necessary in order to assess needs and prevailing circumstances, so that training activities can be tailored accordingly. The Commission may wish to identify the most appropriate ways of enabling the United Nations to respond to the requests of States in this area and to provide the assistance outlined above.

II. CONCLUSIONS

31. The activities outlined in the present report constitute first steps towards the implementation of the Naples Political Declaration and Global Action Plan. The activities, which are designed to assist States in translating into reality the commitment that they proclaimed at Naples, invariably depend on the cooperation of all States and their support of the operational capacity of the United Nations. A considerable number of other activities are required for the full implementation of the Naples Political Declaration and Global Action Plan, both at the national and international levels. The Commission on Crime Prevention and Criminal Justice has a crucial role to play not only in identifying the most appropriate course of action for such implementation and the required modalities, but also in keeping implementation under constant review and in encouraging States to take action in that direction.

32. With respect to the implementation of the World Ministerial Conference resolution on the establishment of an international task force, the Government of Italy convened a meeting of the task force at Rome on 17 and 18 May 1995. It is expected that the results of the meeting will be brought to the attention of the Commission by the Government of Italy.

UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1995/3
26 April 1995

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Fourth session
Vienna, 30 May-9 June 1995
Item 4 of the provisional agenda*

REVIEW OF PRIORITY THEMES

Additional information on measures to combat alien-smuggling

Note by the Secretariat

CONTENTS

	Paragraphs	*Page*
INTRODUCTION	1-13	2
I. INFORMATION RECEIVED FROM GOVERNMENTS	14-59	4
A. Barbados	15-18	4
B. Brunei Darussalam	19-20	5
C. Cuba	21	5
D. France	22-27	6
E. Germany	28-41	7
F. Malawi	42	10
G. Nepal	43-44	10
H. Oman	45-48	10
I. Spain	49-55	11
J. Syrian Arab Republic	56-59	12
II. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS	60-68	13
International Organization for Migration	61-68	13

*E/CN.15/1995/1.

V.95-53386T

INTRODUCTION

1. The present note updates the report of the Secretary-General on measures to combat alien-smuggling (A/49/350 and Add.1) and is based on information provided by the Governments of Barbados, Brunei Darussalam, Cuba, France, Germany, Malawi, Nepal, Oman, Spain and Syrian Arab Republic and by the International Organization for Migration, in reply to the note verbale dated 18 November 1994 from the Secretary-General to States, relevant specialized agencies and inter-governmental agencies.

2. The accelerated pace of illegal migration can be viewed as part of a process of globalization that has facilitated the transnational movement of people and that is related to the growth of international trade, foreign investment and advances in transportation and communication. Illegal alien-smuggling activities are becoming ever more threatening to sending, transit or receiving countries, because such activities undermine national systems for orderly immigration. Small-scale smugglers in separate regions are increasingly being replaced by large-scale operations under the control of international organized criminal groups. These groups, apart from smuggling migrants, are also often involved in other criminal activities, including trafficking in arms, drugs, hazardous materials and stolen motor vehicles. They use the same resources and personnel in dealing in a relatively new commodity: illegal aliens. The purpose is not only to bring people into a country illegally, but also to exploit them in underground economies once they are there. By entering the field of international migration, these networks are extending and strengthening their criminal activities in the affected countries.

3. Illegal migration services, including forged documentation, transportation and accommodation, range in price from US$ 500 to US$ 30,000, depending on the destination and other factors. The total volume of trafficking is estimated to generate gross annual earnings of between US$ 5 billion and US$ 7 billion.[1] In return for the fees that they charge, the traffickers offer the migrants forged travel documents and organize safe passage across all borders. Forged or falsified travel documents or authentic travel documents obtained under false pretences are a requirement for most illegal alien-smuggling activities. Such documents are required, for instance:

(a) When applying for a visa;

(b) When obtaining an exit authorization from the country of departure;

(c) For transportation by air or sea carrier;

(d) For the border controls conducted by transit countries;

(e) For entering the country of destination;

(f) In many cases, for deceiving social and migration authorities.

4. International smuggling groups often use documents that have been forged by specialists or that have been supplied by professional document procurers. Some smuggling gangs specialize in obtaining under false pretences authentic visas from diplomatic missions abroad.

5. Gangs of traffickers try to secure for the migrants stays in the countries of destination that are as long as possible. To do that, they diligently analyse the legal systems and policy measures in the transit countries and countries of destination. One of their methods consists in removing all identity documents from the smuggled aliens, in order to delay their return or to make it impossible. Only a small minority of the migrants who are caught hold valid documents. When they enter a country from a safe third

country, smuggled aliens are, in some cases, instructed to destroy all evidence of their movement, in order to reduce their chances of being readmitted to the third country.

6. Illegal smuggling activities are characterized by the brutality and ruthlessness of the traffickers. Safeguarding the human rights of trafficked migrants at all stages of their journey has become a major challenge for the countries concerned. For example, there are cases where trafficked migrants have been abandoned *en route* by traffickers who had taken the migrants' money and travel documents; in certain instances this has resulted in trafficked migrants dying from exposure or being placed at risk on the ocean.[2] The violence of smugglers of aliens is often directed not only against the persons being smuggled, but also against their relatives who have remained in their country of origin. There are cases where criminal organizations force aliens to commit criminal offences, such as drug trafficking, theft, burglary or prostitution, to pay for outstanding passage fees. This can be extremely damaging to the country of destination. The migrants are often exploited after they take up residence in the receiving country and become a source of cheap labour for legal enterprises owned or controlled by criminal networks. For illegal aliens in these circumstances, normal participation in civil society becomes difficult, if not impossible, and they have few rights to the social services and protection available to persons who are legally in the country.[3]

7. Illegal migrants tend to live in fear that their status will be discovered by the authorities. There is evidence that in some countries illegal aliens are being exploited by people posing as immigration lawyers, advisers or experts. Such persons often charge excessive fees but do not complete the procedures to legalize the status of their clients, in some cases reporting the illegal aliens to authorities for deportation. The illegal aliens concerned have little recourse under the law for their lawyers' failure to perform, because they would be deported if they were to complain.[4]

8. The involvement of organized crime in illegal migration and the problems associated with it in the countries of destination also have had negative effects on public perception of legitimate migration and of migrant communities, in some cases generating negative reactions of a xenophobic character, eroding the democratic and pluralistic institutions and values of the receiving countries.

9. Women comprise an especially vulnerable group of smuggled aliens.* On arrival in the country of destination, the majority of them work in the informal sector, where there is often no legal enforcement of standards relating to wages and working conditions.[5] For many such women, sexual violence is part of the trafficking process. Frequently they are forced into prostitution during transit and upon arrival.[2] Usually the victims are poor people who have been lured by false promises of well-paid jobs abroad and have paid a fee for the opportunity. In other cases, they have been sold by their families or have been abducted. Once out of the country, the victims' documents are confiscated by organized criminal groups and the victims themselves are sold to brothel owners and others who force them to work as prostitutes. In order to recover their documents and leave, the victims are obliged to pay a sum of money for their transportation, food, accommodation and medical costs. Given the ever-increasing sums that they owe, most women have difficulty in extricating themselves from this situation. Others find themselves resold and their debts "recalculated" just as they were about to pay them off. Women are trapped into an exploitative situation by threats of violence. Recently, the Economic and Social Commission for Asia and the Pacific noted that the growth of clandestine migration and female labour migration had created special problems for worker protection.[6] It also noted that, where international migration was taking place, it should do so in a regular and supervised manner, not in irregular conditions that involve considerable hardship and exploitation for the individuals concerned.

---

*See the report by the Secretary-General on activities of United Nations bodies and institutions with regard to the issue of violence against women and children (E/CN.15/1995/5).

As with other forms of migrant trafficking, estimates of the number of women trafficked for prostitution vary greatly. But the figure could be as high as tens of thousands a year.

10. The pressures that contribute to the problem continue to increase. These include worsening conditions in countries of origin from a variety of causes, including war, intolerance and poverty. Many illegal migrants are seeking employment opportunities. For example, certain booming economies tend to draw foreign labour to small- and medium-scale firms.[6] Some workers come on tourist visas or forged papers or overstay on work permits. Laws to exclude migrants have, in some cases, appeared to fuel a demand for professional smugglers since other legitimate means to migrate in order to achieve improved economic prospects seem barred.

11. The International Conference on Population and Development, held at Cairo from 5 to 13 September 1994, considered, among other things, the issue of undocumented migrants.[7] The General Assembly, in its resolution 49/128, endorsed the Programme of Action of the International Conference on Population and Development, adopted on 13 September 1994. The International Conference recommended, *inter alia*, the following objectives:[7]

(a) To reduce substantially the number of undocumented migrants, while ensuring that those in need of international protection receive it; to prevent the exploitation of undocumented migrants and to ensure that their basic human rights are protected;

(b) To prevent all international trafficking in migrants, especially for the purposes of prostitution. According to the Programme of Action, Governments of both receiving countries and countries of origin should adopt effective sanctions against those who organize undocumented migration, exploit undocumented migrants or engage in trafficking undocumented migrants, especially against those who engage in any form of international trafficking in women, youth and children.

12. In its resolution 49/166, on traffic in women and girls, the General Assembly welcomed the Programme of Action of the International Conference on Population and Development. In the same resolution, the Assembly called upon all Governments to take appropriate measures to prevent the misuse and exploitation by traffickers of economic activities, such as the development of tourism and the export of labour. In addition, the Assembly recommended that the problem of trafficking in women and girl children should be given consideration within the implementation of all relevant international legal instruments.

13. In its resolution 49/165, on violence against women migrant workers, the General Assembly, *inter alia*, expressed grave concern at the plight of women migrant workers who became victims of physical, mental and sexual harassment and abuse. It invited the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider including in its programme of action the subject of the traffic in women and girls, as well as youth.

I. INFORMATION RECEIVED FROM GOVERNMENTS

14. The present section contains information on measures to combat alien-smuggling that was received after the report of the Secretary-General on the subject (A/49/530 and Add.1) had been issued.

A. Barbados

15. In Barbados, there is currently no legislation dealing specifically with alien-smuggling, but provisions of the immigration act give some legal recourse for combating this activity. Section 10 of

the act provides that no person may enter Barbados by sea or air except at a port of entry and that no person arriving in Barbados may disembark without the consent of an immigration officer. The section further provides that the master of a vessel, including an aircraft, must not allow any person on that vessel to disembark without such consent. Contravention of these provisions are all offences under the act. Sections 11 and 12 of the act also place certain duties on persons entering Barbados and masters of vessels arriving in Barbados.

16. The first schedule of the immigration act includes in the definition of prohibited persons (a) those who knowingly or for profit, aid, encourage or procure other persons who are not citizens of Barbados to enter Barbados illegally or (b) those who are stowaways or who seek to enter Barbados illegally.

17. Barbados is a party to the International Convention for the Safety of Life at Sea, 1960,[8] and the International Convention for the Safety of Life at Sea, 1974,[9] referred to in General Assembly resolution 48/102, on prevention of the smuggling of aliens, and the provisions of those conventions have been specifically made applicable by the shipping act of 1994, sections 312-314.

18. Barbados is also a party to the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,[10] also referred to in General Assembly resolution 48/102. In addition, under the offences against the person act 1994, section 32, it is an offence to wrongfully confine any person. Sections 33 and 34 of that act provide as follows:

> "33. Any person who imports, exports, removes, buys, sells, or disposes of any person as a slave or accepts, receives or detains against his will any person as a slave is guilty of an offence and is liable on conviction on indictment to imprisonment for life.
>
> "34. Any person who unlawfully compels any person to labour against the will of that person is guilty of an offence and is liable on summary conviction to imprisonment for a term of six months."

B. Brunei Darussalam

19. In its effort to combat the smuggling of illegal immigrants into Brunei Darussalam, the Government of that country undertakes the following measures:

(a) The person accused of being an illegal immigrant will be arraigned in a court of law. If that person is found guilty, the court may sentence him or her to a fine, imprisonment or both;

(b) Once the sentence has been served, the immigration department may detain the illegal immigrant to determine his or her nationality and identity for the purposes of repatriation.

20. Brunei Darussalam, through its police force and immigration department, is increasing its efforts to monitor the entrance of illegal immigrants to the country by thorough checks at immigration control posts and other places of entry, the national border and the waterways.

C. Cuba

21. In Cuba, illegal entry into, or departure from, the country, as well as failure to comply with immigration formalities, is treated as a criminal offence since it breaches the migration requirements laid down in legal or administrative provisions. A person who emigrates illegally is deemed to be an alien. Cuban penal legislation, however, does not provide for punishment of alien-smuggling, since this crime does not occur in that country.

D. France

22. France has long endeavoured to combat the illegal smuggling of aliens, as is shown by the order dated 2 November 1945, article 21, which provides that any person who, by means of direct or indirect assistance, facilitates or endeavours to facilitate entry, circulation or unlawful residence of an alien shall be punished by imprisonment for a term of between two months and five years, a fine of between 2,000 and 200,000 French francs, or both.

23. Over the past few years, the effort to combat the smuggling of aliens has become a priority because it forms part of a general policy to control migratory flows and to combat illegal immigration. Consequently, law No. 92-190, dated 26 February 1992, amended the order dated 2 November 1945 and inserted article 20 *bis*, relating to the liability of carriers. Since this amendment came into force, an air, sea or land carrier may be punished by a fine of 10,000 French francs if it disembarks on French territory a foreign national from outside the European Community who does not possess the required travel documents. These penalties are administrative, rather than criminal, in contrast to the provisions of the order dated 2 November 1945, article 21.

24. Designed to bring domestic legislation into line with the requirements of the convention applying the Schengen agreement of 14 June 1985* between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders,[11] article 26, is one of the compensatory measures adopted by the signatories to improve the effectiveness of the control of migratory flows in an area without internal border controls. It also supplements the provision which, by virtue of the order dated 7 November 1945, article 35 *ter*, obliges carriers to carry onward an alien who has been refused entry into France or an alien whose travel has been interrupted, and to bear the related costs.

25. The establishment of carriers' liability was designed to encourage them to be more stringent in checking the travel documents of their passengers, and not to neglect, by reason of their commercial interests, their duties in the prevention of attempts at alien immigration. In this respect, the airlines have, for example, undertaken training in the detection of false documents. Some foreign companies have also received detailed instructions to ensure that they do not take aliens with falsified documents on board.

26. For humanitarian reasons, there are some exceptions to this provision for asylum seekers. The carrier is not punished for carrying an asylum seeker, even if the individual concerned does not have

---

*On 19 June 1990, the parties to the agre[illegible]nt between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers (the Schengen agreement)[11] concluded the convention applying the Schengen agreement, which contained a number of implementing provisions on the abolition of international border identification checks. Related matters were also addressed, such as the treatment of immigrants and the harmonization of policies, cooperation between police forces and adoption of uniform rules on trafficking in firearms and drugs. Accession to the Schengen agreement and to the convention applying the Schengen agreement is reserved solely for member States of the European Community. The following States have in the meantime joined the Schengen group: Greece (6 November 1992), Italy (27 November 1990), Portugal (25 June 1991) and Spain (25 June 1991). Austria was granted observer status in the Schengen group in June 1994 and a request from Denmark for similar status is being examined. Border controls between Belgium, France, Germany, Luxembourg, Netherlands, Portugal and Spain were abolished on 26 March 1995.[12] The convention applying the Schengen agreement is generally regarded as a predecessor to the relaxation of border and customs regulations within the European Community.

the necessary documents. This exception does not apply, however, when the request for asylum is evidently unfounded, even without an in-depth examination.

27. Furthermore, a fine is not applied if the air or sea carrier is able to establish that the required documents were submitted at the time of embarkation. A land carrier that has been unable to verify the travel documents of a passenger using its services from a State that is not a signatory of the Schengen agreement is not required to pay a fine if it can show that a check was made on entry into the territory of one of the States parties to the Schengen agreement or, failing this, that a check was made on entry into French territory by the competent services.

E. Germany

28. In general, the illegal smuggling of aliens into Germany has three stages:

(a) The smugglers recruit persons who are leaving their home country by promising them a better life, offering to take them to Germany in return for the payment of a large sum of money, which can be up to 40,000 deutsche mark in some cases. Most of the victims are nationals of countries in Africa, Asia and central and eastern Europe;

(b) The traffickers take the aliens to the country of destination in contravention of immigration requirements and with recourse to violence if necessary;

(c) Often the smugglers continue to control the aliens after arrival in the country of destination by criminally exploiting their position of servitude or indentured labour. This is possible because the illegal migrants often cannot pay the extortionate passage fees, or they are forced into committing illegal acts and are then blackmailed by the smugglers.

29. According to the intelligence gathered by the German border police, the smuggling of more than 60 per cent of the aliens entering Germany unlawfully, mainly from or via central and eastern Europe, has been undertaken by groups of smugglers operating internationally. In 1993, 2,427 persons were arrested for the smuggling of aliens. That figure was almost 2.5 times greater than the figure for 1992. About 95 per cent of those arrested were from countries other than Germany. Furthermore, according to the German Government, a nationwide analysis of 603 cases of organized crime showed that as many as 1,425 individual offences were connected to alien-smuggling.

30. The efforts of individual States are insufficient to effectively prevent alien-smuggling. There should be concerted action at the regional and international levels. Following the political changes in eastern Europe brought about by the end of the cold war, this important prerequisite has been largely fulfilled. The Government of Germany has pursued a policy of cooperation with other States, based on mutual trust. It brought together the States of Europe when it acted as host to the Ministerial Conference on Measures for Checking Illegal Immigration from and through Central and Eastern Europe, held at Berlin from 30 to 31 October 1991. The German strategy is to undercut the smugglers' efforts in all phases of smuggling. To this end it is necessary:

(a) To make it as difficult as possible to recruit would-be migrants in their countries of origin;

(b) To prevent the would-be victims from being introduced into the country of destination;

(c) If the above aims are not achieved, to work against the exploitation of immigrants by traffickers in Germany, including exploitation through forced labour and criminality;

(d) To arrest and prosecute the smugglers.

31. As a priority, Germany intends to pursue a policy of prevention. It is essential that people living in areas of crisis worldwide should not believe that their only hope for a life with dignity is to leave their homes on the fraudulent advice of smugglers. If people in the countries of origin were better informed about the real living conditions in countries in Europe and in other countries, many more would resist the empty promises of the traffickers. The Government of Germany is working towards the aim of encouraging people to stay in the familiar surroundings of their country of origin within the framework of its refugee concept* of September 1990, by return assistance programmes that have time-limits and are, as a first stage, limited to Bulgaria, Romania and Poland. Another means to discourage illegal migration would be the use of education programmes to inform the general public in the countries of origin about the real entry and residence requirements and about the living conditions in the countries of destination. Apart from these preventive measures, special administrative control measures are required.

32. Together with the other Schengen contracting States, Germany has imposed visa requirements on nationals of 127 States considered most likely to pose an emigration risk and has adopted strict visa issuance provisions which, after the convention applying the Schengen agreement has taken effect, are intended to ensure that fewer visas are obtained under false pretenses.

33. The visa filter has, however, lost a great deal of its importance now that smugglers are increasingly using forged visas. This will be counteracted by using the tamper-proof Schengen visa mark and by employing more sophisticated means of identification.

34. Pursuant to international rules (the Convention on International Civil Aviation[13] and the Convention on the Facilitation of International Maritime Traffic[14]) and to the alien act, section 74, carriers may only transport passengers to the federal territory who possess the documents required by law. If carriers violate these obligations, they may be ordered to refrain from doing so. If they disregard such an order, they will be heavily fined. Recently, authorities have started to apply section 74 to ferry operators from Denmark, Finland, Norway and Sweden.

35. These provisions and measures have forced the smugglers of aliens to change their routes. They now book flights to neighbouring States that have not yet taken any systematic action against transport carriers acting unlawfully. The human traffickers exploit such weak points and smuggle migrants from those places into the countries of destination across land borders. This is an example of how national efforts can be frustrated if they are not accompanied by suitable international measures. For this reason, the Government of Germany is striving:

(a) To encourage all the States of central and eastern Europe to join the control authority working group within the International Air Transport Association, so that they may participate in the international cooperation regarding the prevention of illegal entries by air;

---

*In September 1990, the German Government issued a political memorandum of intention dealing with the increase in illegal immigration to Germany. This memorandum called the refugee concept, proposed that any political or legal measures must consist of two components: (a) the revision of the German alien act; and (b) the amendment of the German Constitution regarding the right of political asylum. Subsequently, in 1993, certain sections of the alien act were amended, as was a section in the Constitution (see S. Blay and A. Zimmerman, "Recent changes in German refugee law", *American Journal of International Law*, vol. 88, April 1994, pp. 361-370).

(b) To have an international maritime traffic body set up that would be comparable to the control authority working group.

36. When smuggled persons reach German borders, they meet another level of migration control, one that has been considerably strengthened over the last two years by additional staffing, the employment of the latest detection technology, the introduction of new tactical procedures and an improvement of asylum provisions. Though such measures can be expected to lead to a drastic decrease in alien-smuggling activities in the long run, a border control area as large as the one between Germany and its eastern neighbours cannot completely absorb the migratory and smuggling pressure. Controls at the eastern borders of the transit States in central Europe should intercept a considerable number of illegal migrants approaching by land. To this end, local control systems should be brought up to the standards of the Schengen agreement. The Ministerial Conference held at Berlin in October 1991 and the Intergovernmental Conference to Prevent and Control Migration, held at Budapest from 15 to 16 February 1993, adopted recommendations that should urgently be implemented. Furthermore, the Czech Republic, Germany and Poland have agreed on a security partnership under the umbrella of which there is wide-ranging communication from the local level to the central level. The core elements are agreements on cooperation in combating organized crime, which are to be supplemented by further agreements on cooperation between police and border authorities in border areas.

37. If, in spite of all the Government's efforts, smuggled aliens succeed in entering German territory, they must be protected from being permanently exploited by organized criminal gangs or from being forced into a life of crime. The legal instruments necessary to do this already exist. For example, unlawfully employing workers, unlawfully hiring out foreign workers not having work permits or recruiting workers from abroad without the authorization of the competent authority are acts subject to heavy penalties. Some problems have been encountered in applying these provisions, however, because of the difficulties involved in detecting offences. Also, in some cases, the illegal aliens leave the country, defeating the smugglers' plans to exploit them. Germany has supported all efforts to establish a return network among States both within and outside Europe, has concluded readmission agreements with a number of Governments following a common model and has made plans to conclude more agreements of that type.

38. Draft anti-crime legislation currently before the German Parliament contains, among other things, a number of provisions concerning alien-smuggling. By allowing the interception of telephone communications, the draft legislation is expected to enable police authorities to find not only small-scale offenders, but also criminals higher up in the chain of command. In order to remove the financial incentives to offend, provisions for the confiscation and forfeiture of the proceeds of crime that already exist in the Act on Combating Organized Crime are also applicable to aggravated forms of alien-smuggling.

39. Regarding the penal provisions applicable to smugglers of aliens, the draft legislation provides a considerable increase in the statutory range of punishment in cases where the offenders have committed serious offences. This is designed to stop alien-smuggling offences from being treated as petty crime and to ensure that such offences are treated with the necessary seriousness.

40. In most central and eastern European countries it has been made a punishable criminal offence to smuggle aliens. In the majority of those countries only smuggling into those countries is penalized, not *involvement in smuggling activities affecting other countries.* This has led to a situation in which the traffickers avoid the countries of destination so that they cannot be arrested and punished there, while they are not liable to prosecution in their countries of residence.

41. On the basis of the convention applying the Schengen agreement, article 27, the German Government intends to conclude agreements with neighbouring countries in eastern Europe, in which it would be agreed that their legal systems would also make it a punishable offence to smuggle aliens into the territory of another contracting partner. Eventually, such arrangements may be extended to the rest of Europe and to other regions.

F. Malawi

42. Malawi reported that no recent measures had been introduced in that country to combat the smuggling of aliens in the context of the broader problem of transnational crime.

G. Nepal

43. In Nepal, the entry and exit of aliens are regulated by the immigration act. No foreign national, whether a tourist, migrant worker, settler or any other person, is permitted to enter the country without completing the prescribed procedure. The act is administered by the Ministry of Home Affairs and is carried out by police at the relevant border checkpoint, the immigration office and border administration office, which are supervised by their respective central departments. All foreigners, except Indian nationals, should have Nepalese visas for their entry and stay in the country. Otherwise, aliens are subject to action under the immigration act.

44. Nepal is not in a position to bear the burden of illegal migrants because of its relatively small size and lack of resources. Accordingly, the Government has been combating alien-smuggling by using legal and administrative measures. Nepal has given shelter to around 100,000 refugees who claimed that they were deprived of the minimum human rights in their countries of origin. Certain other nationals who enter the country illegally are, after a thorough investigation, handled locally by the Office of the United Nations High Commissioner for Refugees (UNHCR). With the assistance of UNHCR, the refugees are then sent to third countries of their choice.

H. Oman

45. Oman adheres to the principle of international cooperation in the face of the problem of smuggling of aliens by criminal organizations.

46. Infiltration and smuggling across international borders have become disturbing problems for many countries, particularly in view of the increasing number of aliens entering countries illegally. They also create secondary economic, social and political problems and may lead to security problems. Many of the individuals involved attempt to prove that they are citizens of the country that they have infiltrated and apply for passports of that country, which they use in an attempt to obtain the rights and privileges of genuine citizens of that country.

47. The policy of Oman is not to accept any person or group smuggled into the country, for whatever reason. Persons who enter Oman illegally are considered to have committed a crime punishable under the law, and appropriate legal proceedings are taken against them. The attitude of the Government towards the problem of illegal migrants is based upon the need to take firm action and to return them to their countries of origin.

48. In order to curb this problem, Oman has taken the following measures:

(a) Illegal aliens are detained in isolation in temporary camps with security arrangements and are provided with means of sustenance, such as food, electricity, water and medical services;

(b) Certain precautionary measures are taken to avert the occurrence of riots or the occupation of premises where this is considered to be a possibility;

(c) Measures to counter infiltration by further groups are taken, such as intensification of sea and land patrols at locations that could be used for infiltration;

(d) Coordination and cooperation with the relevant security forces and appropriate agencies of neighbouring countries, and the exchange of information and experiences with them;

(e) Coordination is undertaken with the embassies of the countries of origin of illegal aliens, as well as with UNHCR, to secure their deportation;

(f) Legal action is taken against some infiltrators for breach of the laws governing the entry of foreigners into Oman.

I. Spain

49. Spain reported that under the draft penal code amendment bill, articles 286 and 287, illegal trafficking in workers and the clandestine immigration of workers would be considered offences, with the penalties of imprisonment for a term of between one and three years; similar penalties would be imposed on any person who promotes or assists the clandestine immigration of workers into Spain and on any person who, feigning the existence of an employment contract or position, or using any similar deception, causes or promotes the emigration of any person to another country.

50. In addition, offences and corresponding sanctions in the area of aliens have been regulated by law 7/1985 of 1 July 1985, concerning the rights and freedoms of aliens in Spain, and the relevant regulations. Article 25, paragraph 3, of that law provides that acts and omissions of persons or entities promoting, intermediating in or protecting the legal situation of aliens in that country or facilitating non-compliance with any of the obligations of aliens laid down in the provisions in force shall also be considered offences under that law.

51. The Ministry of Justice and Internal Affairs can impose fines of up to 2 million pesetas, the amount being determined by the capacity of the offenders to pay, their degree of deliberate intent, and any reoffending. In certain cases, the sanction consists of expelling the aliens without a fine (article 27).

52. Law 8/1988 of 7 April 1988 provides for offences of a social nature including serious offences such as entrepreneurs using foreign workers without work permits, and individuals or bodies corporate promoting, mediating in or abetting the employment of aliens in Spain without work permits.

53. An amendment to the penal code, introducing article 499 *bis*, specifically provides for the punishment of those who engage in alien-smuggling.

54. A new asylum law has been introduced with the dual purpose of closing the loopholes in the old law and bringing Spanish legislation into line with that of other countries of the European Community and adapting it to the convention applying the Schengen agreement.

55. In addition to the above-mentioned legislation, the following administrative measures have been adopted in Spain:

(a) New administrative measures have been established, and the existing organs restructured, which deal with matters relating to aliens and border control, as well as the control of illegal

immigration. Examples include the creation, by royal decree 2322/1993 dated 29 December 1993, of the General Directorate for Aliens and Asylum (currently the General Directorate for Electoral Matters, Aliens and Asylum) in the Ministry of Internal Affairs;

(b) The General Documentation Commissariat, which is the part of the General Directorate of Police responsible for controlling illegal immigration, has been restructured to enable it to deal more effectively with the increasing immigration problems in Spain, for example by establishing a central border control service in the General Documentation Commissariat;

(c) A growing number of police officers, at the executive and basic levels, are participating in specialized courses on border control and aliens, to make them better prepared and trained to cope with the problems of illegal immigration;

(d) Spain is involved in various international bodies concerned with these matters, such as the European Community, the Schengen Group and the Budapest Group (established by the Intergovernmental Conference held at Budapest in February 1993), the idea being that, in order to solve the problems generated by illegal immigration, it is necessary to act in coordination with other countries that are the source or origin of illegal immigration or that have similar problems;

(e) Operational groups are being established or strengthened within central authorities for coordinating and implementing measures to combat the focal points in the organized criminal groups that are responsible for facilitating illegal immigration.

J. Syrian Arab Republic

56. The Syrian Arab Republic reported that no illegal immigration had been recorded in that country. The Syrian Arab Republic is a party to the slavery and forced labour convention. Its domestic law allows entry into the country and departure for foreign countries only to persons with valid passports and entry visas in order to prevent its territory, sea or air space from being used for illegal migration.

57. Decree No. 29 of 15 January 1970 and other regulatory decisions regulate aliens' entry into and departure from the Syrian Arab Republic through specified locations and by means of passports. The captains of ships and aeroplanes are advised that upon arriving in and departing from the country, they should submit lists showing the names of their passengers, as well as special statements concerning those who do not possess passports.

58. It is the duty of border authorities to ascertain whether the legal requirements for entry into and departure from the territories of the Syrian Arab Republic have been complied with. The laws and regulations in force in the country prevent the smuggling of aliens. The Government reported that it was prepared to study any request for assistance in this field, whether by means of bilateral, regional or international agreements, and to exchange any information in this regard.

59. When considering what measures are necessary to deal with and prevent illegal migration, the Government stated that the disparity of incomes between developing and developed countries should be taken into account. The provision of effective assistance to promote the economies of developing countries was considered to be one of the most important means to deal with illegal migration to developed countries. Furthermore, territorial conflicts have also contributed to the departure and emigration of the inhabitants of certain territories, often illegally, in order to escape. These two factors should be taken into account in order to take action to avoid their consequences.

II. INFORMATION RECEIVED FROM INTERGOVERNMENTAL ORGANIZATIONS

60. The present section contains information on measures to combat alien-smuggling that was received after the report of the Secretary-General on the subject (A/49/530 and Add.1) had been issued.

International Organization for Migration

61. The International Organization for Migration reported a range of activities relating to migration, including illegal migration. It had organized a seminar entitled "International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights".[15] The seminar provided a forum for countries of origin and destination and transit countries to discuss and better understand the nature of migrant trafficking, the vulnerability of the migrants involved and the diverse national practices currently in place to combat migrant trafficking and to protect migrants. The seminar was a response to General Assembly resolution 48/102, in which the Assembly requested the International Organization for Migration and other intergovernmental organizations to consider ways and means of enhancing international cooperation to combat the smuggling of aliens.

62. At the seminar, the International Organization for Migration presented a working definition of trafficking in migrants. It was argued that such trafficking had four elements: it required a trafficker or intermediary to facilitate the migration; it involved payment to the trafficker by the migrant or on his behalf; the migration itself was illegal and had to be supported by various illegal acts; and the migrant who was party to the transaction was making a voluntary choice. It was mentioned that there were different types of these activities with different dimensions to them, ranging from small-scale to large-scale operations that controlled transnational networks and provided documentation, transportation, provision of assistance in crossing, safe places for transit, residence in receiving countries and illegal employment.

63. It was noted at the seminar that while there had been a number of conferences on the illegal trafficking in aliens, mechanisms for sustained and effective coordination and international cooperation to deal with the emerging problems were not firmly in place. There was a need to harmonize national policies and to coordinate control systems. National systems, no matter how thorough their coverage, would have only limited effectiveness if they were not accompanied by international cooperation.

64. It was stated that wide differences existed among the legal systems of countries, including the penalties imposed, the detention of illegal migrants, procedures of migration, standardization of documentation and procedures relating to passports and visas. In some cases, traffickers conducted their operations from third countries, where they were safe from prosecution. Some countries had progressed further than others in building national capabilities to deal with illegal migration, and there was much that countries could learn from each other. A system for the collection and ready exchange of information among countries was a crucial factor in an effective strategy for the control and prevention of trafficking.

65. There was consensus at the seminar that the task of highest priority was to combat the internationally organized criminal networks engaged in trafficking in migrants as well as other illicit activities. Technical assistance was considered important for the improvement of legal systems, documentation relating to passports and visas, methods of control and prevention, and systems for information and data collection.

66. One means to prevent trafficking in migrants that was recommended by the seminar was the dissemination of information in the sending countries about the real situation in receiving countries, including the laws, procedures and existing situation relating to migration, the hazards and exploitation

to which migrants were exposed in the process of illegal entry and trafficking, and the special risks associated with the organized criminal groups undertaking the operations. Such programmes of education required international cooperation to facilitate the exchange of information.

67. In order to protect the human rights of illegal aliens, it was recommended that laws and procedures should be evaluated by Governments in terms of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex). That approach should be combined with the strengthening of the law, intelligence systems, enforcement of laws, and judicial capacities to dismantle the trafficking networks.

68. In dealing with the more deep-seated causes of migration, there was considered to be a need to incorporate the issues concerning migration into the international policies and programmes relating to trade, foreign investment and development cooperation.[16]

Notes

[1]See International Organization for Migration, "Seminar on 'International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights': summary report by the Rapporteur and proposed follow-up action" (MC/1827), Geneva, 26-28 October 1994, para. 30.

[2]"Trafficking in migrants", *Quarterly Bulletin of the International Organization for Migration*, No. 4, September 1994.

[3]"Off to work", *Newsweek*, 17 October 1994, p. 41.

[4]"Immigration: difficult times", *West Africa*, 23-29 May 1994, p. 911.

[5]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex, para. 4.9. The report will be issued subsequently as a sales publication of the United Nations.

[6]*Inter Press Service Daily Journal*, vol. 2, No. 199 (20 October 1994), pp. 1-2.

[7]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex, paras. 10.15-10.20. The report will be issued subsequently as a sales publication of the United Nations.

[8]United Nations, *Treaty Series*, vol. 536, No. 7794.

[9]Ibid., vol. 1184, No. 18961.

[10]Ibid., vol. 266, No. 3822.

[11]*International Legal Materials*, vol. XXX, No. 1 (January 1991).

[12]European Commission, "Information paper on the implementation of the convention applying the Schengen agreement" (XV/A-3), 16 March 1995.

[13]United Nations, *Treaty Series*, vol. 740, No. 10612.

[14]Ibid., vol. 591, No. 8564.

[15]See International Organization for Migration, "Seminar on 'International Response to Trafficking in Migrants and the Safeguarding of Migrant Rights': summary report by the Rapporteur and proposed follow-up action" (MC/1827), Geneva, 26-28 October 1994.

[16]See *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (A/CONF.171/13), annex. The report will be issued subsequently as a sales publication of the United Nations.